

Appendix A

Statutory Basis of E.O. 10450

1. Executive Order 10450, 27 April 1953, extends the provisions of the Act of 26 August 1950 to "all other departments and agencies of the Government," in addition to those agencies specifically named in the Act. This Executive Order cites as its statutory authority the following:

R.S. 1753 (5 USC 631)
Civil Service Act of 1883 (5 USC 632 et seq.)
Section 9A of the Act of 2 August 1939 (5 USC 118(j))
Act of 26 August 1950 (5 USC 22-1 et seq.)

2. 5 USC 118(j) was repealed by the Act of 9 August 1955 (69 Stat. 25). It makes membership in an "overthrow by force" organization grounds for removal of civilian employees.

3. 5 USC 631 authorizes the President "to prescribe such regulations for the admission of persons into the Civil Service of the United States as may best promote the efficiency thereof."

4. 5 USC 632 et seq. are concerned primarily with the responsibilities and authorities of the Civil Service Commission. Section 652 is entitled "Removal Without Pay From Classified Civil Service" and provides, *inter alia*: "No person in the classified Civil Service of the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing."

5. 5 USC 22-1 provides: "Notwithstanding the provisions of section 652 of this Title, or the provisions of any other law, the Secretary of State...(and other named departments)...may, in his absolute discretion and when deemed necessary in the interest of national security, suspend, without pay, any civilian officer or employee of the Department of State...(etc.)..."

It further provides: "The agency head concerned may, following such investigation and review as he deems necessary, terminate the employment of such suspended civilian officer or employee whenever he

shall determine such termination necessary or advisable in the interest of the national security of the United States, and such determination by the agency head concerned shall be conclusive and final."

A further relevant provision is the following: "Provided further, that the termination of employment herein provided shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the Government."

6. The last cited provision seems in fact invalidated by the provisions of Executive Order 10450, which extends the coverage of 5 USC 22-1 to all departments and agencies. The Executive Order recites that Government employment is a privilege and that the employment of any person must be "clearly consistent with the interests of the national security." The Executive Order recites the desideratum that "all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies." The Civil Service Commission is given the responsibility for establishing consistency among the procedures of the various departments and agencies and for balancing the national security against the equitable rights of individual employees. "All departments and agencies of the Government are directed to cooperate with the Civil Service Commission to facilitate the accomplishment of the responsibilities assigned to it."

7. The case of Cole v. Young (125 F. Supp. 284), construing section 22-1, concluded that this section: "Constitutes a limitation of the Civil Service Act, section 652 of this Title, and the Veterans' Preference Act, sections 851, 861, 863 of this Title and withdraws protection of those sections or any other Congressional act from any officer or employee whose removal is deemed necessary in interest of national security and supersedes sections 851, 861, 863 of this Title, pro tanto insofar as the two are inconsistent." The Supreme Court reversal of this case did not reverse this particular holding, but affirms it.